Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006

Message Text

LIMITED OFFICIAL USE

PAGE 01 STATE 022760

66
ORIGIN ARA-03

INFO OCT-01 ISO-00 /004 R

66608
DRAFTED BY USOAS/AWNOONAN
APPROVED BY USOAS JWFORD
ARABC WLOWENTHAL (DRAFT
---------- 088669
P 181810Z FEB 75
FM SECSTATE WASHDC
TO ALL AMERICAN REPUBLIC DIPLOMATIC POSTS PRIORITY
USCINCSO
XMT AMEMBASSY SANTIAGO

LIMITED OFFICIAL USE STATE 022760

FOLLOWING REPEAT STATE 022760 ACTION SANTIAGO JAN 31

QUOTE

LIMITED OFFICIAL USE STATE 022760

SUBJECT: COUNTRY ELIGIBILITY FOR GENERALIZED PREFERENCES
(GSP) UNDER SECS. 502(B) (4) AND (6) OF TITLE V OF THE
TRADE ACT OF 1974

REF: (A) STATE 282968 (B) STATE 282967

1. AS REPORTED REF B, BEFORE GSP CAN BE IMPLEMENTED
UNDER THE TRADE ACT OF 1974, THE INTERNATIONAL TRADE
COMMISSION (ITC) MUST INVESTIGATE THE DOMESTIC ECONOMIC
EFFECT OF PREFERENTIAL DUTY-FREE TARIFF TREATMENT ON IMPORTS
OF THOSE ARTICLES PROPOSED FOR SUCH TREATMENT FROM
COUNTRIES DESIGNATED IN AN EXECUTIVE ORDER AS BENEFICIARY
DEVELOPING COUNTRIES. THIS MESSAGE DISCUSSES COUNTRY
ELIGIBILITY UNDER THE NATIONALIZATION AND ARBITRATION PRO-
VISIONS OF THE ACT.

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 STATE 022760

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006

2. SEC. 502 (B) (4) OF TITLE V OF THE ACT PROHIBITS THE PRESIDENT FROM DESIGNATING AS ELIGIBLE FOR GSP ANY COUNTRY WHICH HAS NATIONALIZED THE PROPERTY OF U.S. CITIZENS (INCLUDING CORPORATIONS, PARTNERSHIPS OR ASSOCIATIONS 50 PERCENT OR MORE BENEFICIALLY OWNED BY U.S. CITIZENS), OR

TAKEN OTHER ACTIONS WITH SIMILAR EFFECT, UNLESS HE DETERMINES THAT FAIR COMPENSATION IS BEING PAID, THAT SUCH COUNTRY IS "OTHERWISE TAKING STEPS TO DISCHARGE ITS OBLIGATIONS UNDER INTERNATIONAL LAW," OR THAT THE PARTIES HAVE SUBMITTED THE DISPUTE TO ARBITRATION. SEC. 502 (B) (6) APPLIES A SIMILAR PROHIBITION TO ANY COUNTRY WHICH FAILS TO ACT IN GOOD FAITH TO RECOGNIZE AS BINDING OR TO ENFORCE AN ARBITRAL AWARD IN FAVOR OF U.S. CITIZENS (AGAIN INCLUDING CORPORATIONS, PARTNERSHIPS OR ASSOCIATIONS 50 PERCENT OR MORE BENEFICIALLY OWNED BY U.S. CITIZENS). FYI. UNLIKE THE HICKENLOOPER AMENDMENT (SEC. 620 (B) (4) (D) REQUIRES A PRESIDENTIAL DETERMINATION TO BE MADE AND FURNISHED TO CONGRESS REGARDING THE APPLICATION OF THAT SUBSECTION TO ALL UNRESOLVED DISPUTES. THIS NEW REQUIREMENT REINFORCES THE NEED FOR THE USG TO MONITOR AND TO ASSIST IN RESOLVING OUTSTANDING DISPUTES INVOLVING U.S. PROPERTY. END FYI.

3. IT WOULD BE HIGHLY DESIRABLE FOR THE ITC TO UNDERTAKE ITS PRODUCT REVIEW WITH RESPECT TO THE BROADEST POSSIBLE LIST OF POTENTIAL BENEFICIARIES, AND FOR THE COMMISSION TO BEGIN ITS WORK AS SOON AS POSSIBLE. WE WOULD PREFER TO CONDUCT A DETAILED INVESTIGATION OF CASES WHTCH MIGHT AFFECT HOST COUNTRY ELIGIBILITY UNDER SECS. 502(B) (4) AND (6) WHILE THE ITC STUDY IS IN PROGRESS. FOLLOWING DISCUSSIONS WITH CONGRESSIONAL STAFFS, HOWEVER, IT IS NOT CLEAR THAT THE INTERIM WAIVER MENTIONED PARA. 4 REF. B WILL BE USED. SEVERAL ALTERNATIVE METHODS OF ACCOMPLISHING OUR OBJECTIVE ARE ALSO UNDER CONSIDERATION, BUT IT IS POSSIBLE THAT DETERMINATIONS OF COUNTRY ELIGIBILITY MAY HAVE TO BE MADE BEFORE THE ITC CAN BEGIN ITS PRODUCT ANALYSIS.

4. ACCORDINGLY, POSTS ARE REQUESTED TO INFORM THE DEPARTMENT ASAP OF THE STATUS OF OUTSTANDING CASES WHICH MIGHT
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 STATE 022760

AFFECT HOST COUNTRY ELIGIBILITY UNDER SECS. 502(B) (4) AND (6). COMMENTS SHOULD ENCOMPASS, BUT NOT NECESSARILY BE LIMITED TO THE FOLLOWING CASES WHICH DEPARTMENT RECORDS INDICATE MAY REMAIN UNRESOLVED: A. CONCRETOS EADY MIX (IBEC MANAGEMENT SERVICES); B. FORD MOTOR DE CHILE S.A. AUTOMOTRIZ; C. MARCO CHILENA SAI (MARINE CONSTRUCTION AND DESIGN CO.); D. IRECO; E. POTRERILLOS RAILWAY CO.

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006

DEPARTMENT IS UNCERTAIN WHETHER RAILWAY WAS INCLUDED UNDER
ANACONDA SETTLEMENT. CITATION TO PRIOR REPORTING WILL
SUFFICE IF NO SIGNIFICANT DEVELOPMENTS HAVE OCCURRED IN
THE INTERIM.

5. THE STARTING POINT FOR EVALUATION SHOULD BE THE TEXT OF
THE LEGISLATION ITSELF. UNTIL DEFINITIVE LEGAL ANALYSIS OF
502(B) (4) IS COMPLETED, POSTS SHOULD ASSUME IT APPLIES TO
ALL PROPERTY (BOTH COMMERCIAL AND NON-COMMERCIAL) OF U.S.
CITIZENS, WITHOUT REGARD TO VALUE. AS A "RULE OF REASON"
WE ARE LIMITING THE EVALUATION TO CASES ARISING IN
THE POST-WAR ERA, I.E., SINCE JANUARY 1, 1946, OR THE DATE
OF INDEPENDENCE OF THOSE COUNTRIES RECEIVING INDEPENDENCE,
WHICHEVER IS LATER. SINCE SOME ACTIONS (SUCH AS COERCED
PARTICIPATION, SEVERE CURTAILMENT OF MANAGEMENT PREROGA-
TIVES, OR FORCED CANCELLATION OR RENEGOTIATION OF CONTRACTS)
MAY BE EXPROPRIATORY IN EFFECT WHILE STOPPING SHORT OF
OUTRIGHT TAKEOVER, POST ARE REQUESTED TO INFORM DEPARTMENT
OF SUCH CASES TO ENABLE US TO EXERCISE JUDGMENT IN
DETERMINING WHETHER "NATIONALIZATION" HAS OCCURRED WITHIN
THE MEANING OF 502(B) (4) (A)-(C). JUDGMENTS MUST ALSO
BE MADE TO DETERMINE, INTER ALIA, WHETHER THE CRITERIA
OF 502(B) (4) (D) ARE BEING MET, AND WHETHER "GOOD
FAITH" IS PRESENT UNDER 502(B) (6).

6. WOULD ALSO APPRECIATE MISSION COMMENTS REGARDING WHAT
STEPS USG MIGHT APPROPRIATELY TAKE TO BRING THESE
PROVISIONS TO THE ATTENTION OF HOST GOVERNMENT
OFFICIALS, AND TO ENCOURAGE RESOLUTION OF OUTSTANDING
DISPUTES. KISSINGER UNQUOTE MAW

LIMITED OFFICIAL USE

NNN

*** Current Handling Restrictions *** n/a
*** Current Classification *** LIMITED OFFICIAL USE

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: GENERALIZED PREFERENCES (TARIFFS), GSP LIST, INSTRUCTIONS, TRADE LAW
Control Number: n/a
Copy: SINGLE
Draft Date: 31 JAN 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: GolinoFR
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975STATE022760
Document Source: CORE
Document Unique ID: 00
Drafter: AWNOONAN
Enclosure: n/a
Executive Order: n/a
Errors: n/a
Film Number: D750037-0577
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750185/aaaagjuy.tel
Line Count: 149
Locator: TEXT ON MICROFILM, TEXT ON-LINE
Office: ORIGIN ARA
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 75 STATE 282968, 75 STATE 282967
Review Action: RELEASED, APPROVED
Review Authority: GolinoFR
Review Comment: n/a
Review Content Flags:
Review Date: 04 SEP 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <04 SEP 2003 by BoyleJA>; APPROVED <20 NOV 2003 by GolinoFR>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: <DBA CORRECTED> gwr 970930
Subject: COUNTRY ELIGIBILITY FOR GENERALIZED PREFERENCES (GSP) UNDER SECS. 502(B) (4) AND (6) OF TITLE V OF THE
TAGS: ETRD, CI, US
To: SANTIAGO
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006